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November 18, 1997

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 "M" Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: ***Ex Parte* Presentation**
GC Docket No. 92-52

Dear Ms. Salas:

This Law Firm represents the following applicants in comparative broadcast hearing cases currently pending before the Federal Communications Commission: Craig L. Siebert (MM Docket No. 90-323), WEDA, Ltd. (MM Docket No. 90-638) and Columbia FM Limited Partnership (MM Docket No. 90-418) ("Joint Applicants").

The enactment of Section 3002 of the Balanced Budget Act of 1997 (the "Balanced Budget Act"), which extends the Commission's authority to issue initial licenses by competitive bidding to applications for new analog radio and TV broadcasting facilities, will require the Commission to issue new rules to proceed in that manner. Indeed, press reports have indicated for several months that the Commission intended to initiate a new rulemaking or reactivate an existing proceeding to that end. See, *Broadcasting & Cable* (August 25, 1997). Most recently, press reports have indicated that the Commission will vote on an item as soon as its November 25, 1997 meeting.

Joint Applicants hereby expressly urge the Commission to propose rules, consistent with the legislative intent of the Balanced Budget Act, that all mutually exclusive application situations not resolved by February 1, 1998, or where no request for settlement of the case is pending as of that date (where the case can be resolved without reference to comparative criteria), be decided by competitive bidding, consistent with the Congressional intent expressed in Section 3002(a)(3) of the Balanced Budget Act, Pub. L. No. 105-33, 47 U.S.C. § 309(l).

The processing of FCC comparative broadcast cases has been frozen since 1994, and hundreds of these license applications remain pending. Many have been pending for nearly a decade since they were filed. In one case, the applications have been pending for approximately 17 years (MM Docket No. 83-985).

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In adopting the new auction law, Congress has expressed its preference for selection of all initial broadcast authorizations by competitive bidding. The Conference Report accompanying the Balanced Budget Act clearly expresses Congressional intent that the legislation *"requires the Commission to use competitive bidding to use competitive bidding to resolve any mutually exclusive applications for radio or television broadcast licenses that were filed with the Commission prior to July 1, 1997."* The plain meaning of the statute coupled with its legislative history demonstrate that the Commission does not have the authority under the Act to implement comparative hearings to award the licenses.

Prior to the enactment of the Act, former Chairman Hundt and others specifically requested extension of authority in Congressional hearings and elsewhere to include new analog radio and TV licenses because of the problems with comparative hearings and lottery selection. See, e.g., "Statement of Reed E. Hundt, Chairman of the Federal Communications Commission, Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, House of Representatives, February 12, 1997, at 14-15; "The Hard Road Ahead -- An Agenda for the FCC in 1997," December 26, 1996, at 14. Congress has now provided the Commission with this authority.

Developing new comparative criteria will be time consuming and spawn lengthy litigation. If the Commission decides to award even a limited number of licenses by comparative hearings, it will need to develop new comparative hearing criteria. Even if the Commission develops better criteria than those previously employed, the criteria will be challenged in court and will not become effective for several years. Even then, all pending applicants would have to be able to amend their applications in light of any newly-adopted standards. The Commission has already recognized this issue in the Second Further Notice of Proposed Rulemaking in GC Docket No. 92-52, 9 FCC Rcd 2521 (¶ 8) (1994), in which it specifically sought comment on this very issue. This lapse in time will further harm the parties who have had their license application frozen for nearly four years already and deny the benefits to the public of service stymied by the protracted nature of the hearing process.

Allocation of new TV and FM stations carries an implicit finding that the public will benefit from the service provided by an additional station. The current licensing process delays the ability to meet that public interest. The ineluctable conclusion is that use of a comparative system of any kind other than competitive bidding will only further delay service to the public. The Commission should make no exceptions: any initial licensing case where mutually exclusive applications remain after February 1, 1998, or where a request for a settlement of the case is pending (where the case can be resolved without resort to comparative criteria), should be awarded by competitive bidding.

PATTON BOGGS, L.L.P.

Ms. Magalie Roman Salas

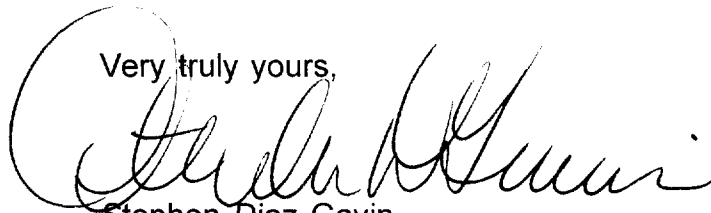
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Pursuant to Section 1.1206(1) of the Commission's Rules, I hereby provide notice that a copy of this letter and the attachment thereto are being served by hand on each Commissioner and the mass media adviser for each of the Commissioners.

If there are any questions concerning this matter, please call me at (202) 457-6340.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen Diaz Gavin", written over a large, faint circular stamp.

Stephen Diaz Gavin
Counsel for Craig L. Siebert; WEDA, Ltd.;
and Columbia FM Limited Partnership

Attachment

cc: The Honorable William E. Kennard, Chairman
The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani
Susan Fox, Esquire
Helgi Walker, Esquire
Jane Mago, Esquire
Anita Walgren, Esquire
Rick Chessen, Esquire

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